and I have no jurisdiction at this stage of the trial to make any order in respect of the third party notice served on Kuruppiah.

I therefore make no order.

No order.

Solicitors: *Dharmananda & Co.; N. Sharma.*

FONG CHONG CHENG v. THE PUBLIC TRUSTEE

[F.C. (Tan Ah Tah F.J., Chua & Ambrose JJ.) July 7, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 16 of 1965]

Land — Action to recover — Right and title — Right of person out of possession extinguished — Limitation Ordinance, 1959, s. 18.

The plaintiff/respondent took charge of the affairs of the estate of *D'A* deceased in 1956 but the letters of administration were granted to him on July 30, 1962. The deceased who was a person of unsound mind died in 1944 intestate. At the time of her death the deceased was the owner of hereditaments in Kallang Road, Singapore, which in August 1934 was leased to the defendant/appellant for a term of ten years at a monthly rent of $120. The lease expired on May 31, 1944 and no rent was paid by the appellant after that date.

On July 1, 1964 the respondent issued a writ against the appellant claiming, *inter alia*, a declaration that he as the administrator of the deceased's estate was entitled to the said hereditaments. The appellant contended that the respondent's alleged claim or right of action was barred by the Limitation Ordinance and that the respondent's right and title, if any, to the said heriditaments were extinguished by virtue of the provisions of the Ordinance. The learned trial judge made the declaration asked for as he was of the view that in the circumstances of the case the Limitation Ordinance, 1959, had no retrospective effect.

On appeal by the defendant:—

Held: (1) in the circumstances of this case, no hardship or injustice would have been caused to the respondent by holding that the Limitation Ordinance had retrospective effect;

(2) applying section 18 of the Ordinance to the facts of this case, the learned trial judge should have held that the right and title of the respondent to the said heriditaments were extinguished.

FEDERAL COURT.

N. A. Mallal (*Tan Peng Khoo* with him) for the appellant.

Po Guan Hock for the respondent.

Cur. Adv. Vult.

Tan Ah Tah F.J.: The plaintiff is the administrator of the estate of one Mildred Edith D'Almeida (hereinafter referred to as "the deceased") who died in the year 1944 intestate. letters of administration of the deceased's estate were granted to the plaintiff on the 30th July, 1962. At the time of her death the deceased was the owner of the lands and premises known as Lot 153-3 and Lot 153-4 of Town Subdivision XVII together with the houses erected thereon and known as Nos. 221 and 223 Kallang Road, Singapore (hereinafter referred to as "the said hereditaments").

By an indenture of lease dated the 25th August 1934, the said hereditaments were leased to the defendant for a term of ten years commencing from the 1st June 1934 at a monthly rent of $120. The deceased was a person of unsound mind and the rent was paid by the defendant to various persons who were appointed committee of the deceased's estate with power to manage the same. The lease expired on the 31st May 1944 and it is clear that no rent was paid by the defendant after that date.

On the 1st July 1964 the plaintiff issued a writ against the defendant claiming, *inter alia*, a declaration that the plaintiff as the administrator of the deceased's estate was entitled to the said hereditaments. Pleadings were filed and the defendant by his defence contended that the plaintiff's alleged claim or right of action was barred by the Limitation Ordinance, 1959 and that the plaintiff's right and title, if any, to the said hereditaments were extinguished by virtue of the provisions of that Ordinance. The action was duly heard and in the result the learned trial judge made the declaration asked for by the plaintiff and also granted him certain other reliefs which he had claimed. It is against this decision that this appeal has been brought by the defendant.

In his grounds of judgment the learned judge expressed the view that in the circumstances of this case the Limitation Ordinance, 1959 had no retrospective effect. It is necessary to consider whether this is a correct view of the law.

As a result of the Japanese occupation of Singapore the Limitation (Amendment) Ordinance, 1949 was enacted. This provided, *inter alia*, that in computing the period of limitation prescribed for any suit the period commencing on the 15th February 1942 and ending on the 30th September 1949 should be excluded. In this case, therefore, time began to run as from the 1st October 1949 and the relevant twelve-year period came to an end on the 30th September 1961.

The affairs of the deceased's estate were placed in the charge of the plaintiff in the year 1956. The Limitation Ordinance, 1959 did not come into force until the 11th September 1959. When it did come into force, the plaintiff still had a period of over two years, that is to say, from the 11th September 1959 to the 30th September 1961, within which he could have taken steps to enforce whatever rights he had against the defendant. It is clear, however, that he did not take the necessary steps to safeguard his rights.

In my view, in the circumstances of this case, where no hardship or injustice would have been caused to the plaintiff by holding that the Limitation Ordinance, 1959 had retrospective effect, the learned judge should have so held.

Section 18 of the Limitation Ordinance, 1959 provides as follows:—

"Subject to the provisions of section 12 of this Ordinance, at the determination of the period limited by this Ordinance to any person for bringing an action to recover land the right and title of such person to the land for the recovery whereof such action might have been brought within such period, shall be extinguished."

Applying section 18 to the facts of this case, the learned judge should have also held that the right and title of the plaintiff to the said hereditaments are extinguished.

For the foregoing reasons, the appeal is allowed with costs here and in the court below and the judgment of the court below set aside. There will be a declaration that the right and title of the plaintiff to the said hereditaments are extinguished.

Chua and **Ambrose JJ.** concurred.

Appeal allowed.

Solicitors: *Oehlers & Choa; Wee Swee Teow & Co.*

WAH TAT BANK LTD. & ORS. v. CHAN CHENG KUM & ORS.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Chua J.) July 7, 1967]

[Singapore — Federal Court Civil Appeal No. Y. 2 of 1966]

Shipping — Carriers — Mate's receipts — Custom of trade between Sarawak and Singapore — Characteristics compared to bills of lading.

Mercantile law — Custom of trade — Shipping — Mate's receipt — Liability upon.

The appellants in this appeal were two banks, one in Sarawak and the other in Singapore. The 2nd appellants were at all material times the agents in Singapore of the 1st appellants. Tiang Seng Chan (Singapore) Ltd. were a trading firm having their head office in Singapore and a branch office in Sibu which did the buying of goods in Sarawak and exporting the same to Singapore. They had as their principal bankers the 1st appellants who regularly afforded overdraft facilities and financed shipments of the goods to Singapore against bills of exchange and notes in favour of the 2nd appellants. The arrangement contemplated was that such shipments consigned to the 2nd appellants would be treated as being under a contract of intended pledge to the 1st appellants as security for financing of these shipments for the said Tiang Seng Chan (Singapore) Ltd. The bulk of Tiang Seng Chan (Singapore) Ltd.'s exports from Sibu to Singapore were carried in two vessels, "Hua Heng" and "Hua Li" owned by the 1st respondents and chartered or booked for freight by the 2nd respondents. During 1961 four consignments of rubber estimated at $600,000 were delivered by the 2nd respondents on board the two vessels for carriage to Singapore and twenty "mate's receipts" which named 2nd appellants as consignees were issued to Tiang Seng Chan (Singapore) Ltd. as shippers. No bills of lading were issued in respect of these consignments but the mate's receipts were held by the 2nd appellants. On arrival at Singapore all the goods covered by these mate's receipts were released by the 2nd respondents to Tiang Seng Chan (Singapore) Ltd. without production or surrender of the mate's receipts but merely upon indemnities signed by Tiang Seng Chan (Singapore) Ltd. and three of its directors. Tiang Seng Chan (Singapore) Ltd. however, were unable to meet their financial obligations to the appellants incurred by the shipments. The appellants, therefore commenced this action for damages for wrongful conversion against the respondents for the four said consignments. The respondents in turn joined Tiang Seng Chan (Singapore) Ltd. and the signing directors as third parties.

The trial judge found against the appellants on the issues of custom and estoppel so that the mate's receipts were not equivalent to documents of title to the goods in the same way as is established for bills of lading and dismissed the claim. On appeal by the plaintiffs:—

Held: (1) it is a customs of the trade relating to shipment of goods between Sarawak and Singapore that mate's receipts are treated as documents of title in the same way as bills of lading;

(2) by reason of such custom of trade being established the issue of mate's receipts to order of the 2nd appellants estops the respondents from denying the 2nd appellants' right to possession of the goods thereby making the 2nd respondents liable for wrongful conversion by their act of making delivery to the third parties;

(3) retrial was ordered of the disputed issue whether or not the 1st respondent was also liable for wrongful conversion since he was merely owner of the vessels which he claimed were under bareboat charterparty at all material times.

Cases referred to:—

(1) *Lickbarrow* v. *Mason* 101 E.R. 380.

(2) *Goodwin* v. *Robarts* 10 Ex. Cases 337 at 352.

(3) *Bettany* v. *Eastern Morning Hull News Co. Ltd.* 16 T.L.R. 401.

(4) *Knights* v. *Wiffen* (1870), 5 L.R. Q.B. 600.

(5) *Bryans* v. *Nix* 150 E.R. 1634.

(6) *Evans & Evans* v. *Nichol & Nichol* 133 E.R. 1286.

(7) *Official Assignee of Madras* v. *Mercantile Bank of India Ltd.* [1935] A.C. 53.

FEDERAL COURT.

R. E. Kerr, Q.C. (*M. Karthigesu* with him) for the appellants.

R. A. MacCrindle, Q.C. (*C. H. Smith* with him) for the respondents.

Cur. Adv. Vult.

Wee Chong Jin C.J.: The appellants in this appeal are two banks, one in Sarawak and the other in Singapore. The Singapore bank, The Oversea-Chinese Banking Corporation Ltd., are the second appellants, and were at all material times the Singapore agents of the Sarawak bank, Wah Tat Bank Ltd., the first appellants. The first respondent, Chan Cheng Kum was at all material times the owner of two motor vessels "Hua Heng" and "Hua Li" plying between